(67)

A.F.R.

**HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR**

**Writ Petition No.2701 of 2003**

PETITIONER: Chandrahas Dewangan, S/o Shri Hari Ram Dewangan, Aged about 36 years, Presently working as the Commissioner, Municipal Corporation, Korba, Distt. Korba (C.G.)

Versus

RESPONDENTS:

1. State of Chhattisgarh, Through the Secretary, Department of Environment & Urban Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur Chhattisgarh.
2. State of Chhattisgarh, through the Secretary, General Administration Department, Mantrayala, Dau Kalyan Singh Bhawan, Raipur, (C.G.).
3. P.B. Kashi, Dy. Director Urban Development Deptt., Govt. of Chhattisgarh, Raipur (Chhattisgarh).

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**POST FOR ORDER ON 26th SEPTEMBER, 2003**

Sd/-
L.C.BHADOO
Judge

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Present: -

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| Shri R.S. Jaiswal, Advocate | For the petitioner |
| Shri Sanjay K. Agrawal, Dy. Advocate General | For respondents 1 and 2. |
| Shri Prashant Mishra, Advocate | For respondent No.3 |

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Before: Hon'ble Shri Justice L.C. Bhadoo

ORDER

(Passed on 26th September, 2003)

1. By this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the order dated 26-8-2003 by which the services of the petitioner has been repatriated from the Department of Environment & Urban Development to his parent department General Administration Department, Government of Chhattisgarh, Raipur within a short period of 8 months.

2. The petitioner's petition is that he entered the State Administrative Services in the year 1995 after selection by the State Public Service Commission. After receiving the training at the Administrative Academy, Bhopal, the petitioner worked as Deputy Collector at various places and ultimately on the formation of the new State of Chhattisgarh the petitioner was allocated to the Chhattisgarh Administrative Services and he was posted as Deputy Collector, Korba in the year 2000, he was also given the charge of Sub Divisional Magistrate, Katghora.

3. On 16-5-2002, he was transferred and posted as Deputy Collector, Bilaspur. On promotion as Joint Collector the petitioner was posted at Bilaspur, then vide order dated 29-11-2002 the petitioner was sent on deputation to Urban Development Department and posted as Commissioner, Municipal Corporation, Korba. During this period, the petitioner worked in the interest of Municipal Corporation and general public with all sincerity and devotion. He utilized his efficiency, excellence and administrative skills for the welfare of the people of Korba. During that period he was able to establish Electronic Sewa Centre, first of its kind in the State of Chhattisgarh, wherein subscribers can deposit their telephone bills, electricity bills, corporation taxes, make enquiries of general nature including Railway Reservation at a single place and an Old Age Home was also opened under the rehabilitation scheme for down -trodden people constructed houses under "Valmiki/Ambedkar Awas Yogana".

4. But, to utter surprise of the petitioner vide impugned order dated 26-8-2003 passed by respondent No.1, within a short span of 8 months the petitioner has again been transferred and more specifically repatriated to the parent department without indicating any further place of posting. The petitioner believes that this time his repatriation is politically motivated to please and act on dictates of certain persons having political influence, as they were not getting undue favour from the petitioner. The petitioner believes that there is no administrative reason or any material warranting shifting of the petitioner within such a short time. Frequent transfer without any complaint and only on dictates of some persons is victimization of the

petitioner and has demoralizing effect which is violative of Articles 14, 16 and 21 of the Constitution of India. In the normal course under the State Government Service for sending an officer on deputation is minimum for a period of two years unless there is any exigency on administrative grounds. The action of respondents of frequent transfer without administrative exigency or public interest is arbitrary and in colourable exercise of power only with a view to accommodate the respondent No.3, the petitioner has been transferred, therefore, the transfer order is arbitrary and malafide.

5. Return has been filed on behalf of respondents 1 and 2 in which it has been mentioned that the repatriation order dated 26-8-2003 is ordinary routine administration action because of the exigency of the services. The petitioner has no vested right to continue in the department of Environment and Urban Development, as the Government has right to repatriate the services of the petitioner to the parent department. It is a pure and simple condition of the service. It is incorrect to say that the petitioner has been repatriated in order to accommodate respondent No.3. The transfer of the petitioner is not politically motivated or malafide, therefore, the petition deserves to be dismissed.

6. Respondent No.3 has also filed the return stating that the transfer order was issued as a Government function and on the ground of administrative exigency. The answering respondent has joined as Commissioner of Korba on 27-8-2003. The answering respondent was working as Deputy Director, Urban Administration, Directorate, Raipur and in his place one Mr. Ram Mani Yadav had already joined as Deputy Director, Urban Administration, Directorate, Raipur and one Mr. Jeevan Lal Thakur has been posted at the place of Mr. Ram Mani Yadav, therefore, the petition be dismissed.

7. I have heard Shri R.S. Jaiswal, learned counsel for the petitioner, Shri Sanjay K. Agrawal, Deputy Advocate General for respondents 1 and 2 and Shri Prashant Mishra, learned counsel for the respondent No.3.

8. The petitioner's challenge which the learned counsel for the petitioner submitted in his arguments is primarily on the following grounds:-

(i) Ordinarily when the officer is sent on deputation, in the normal Course term is two years and the petitioner has been repatriated within a short span of 8 months.

(ii) The transfer of the petitioner has been effected as per his belief for political reasons and to accommodate respondent No.3, therefore, it is malafide and in colourable exercise of powers and it is not in the administrative exigency.

9. The learned counsel for the petitioner further submitted that as per the circular, Annexure-P/5, issued by the State of Chhattisgarh the Government has expected that the officers belonging to SC/ST and OBC should not be subjected to frequent transfers and while making posting at the important places the officers belonging to these categories should be considered for those postings. Counsel further submitted that since the petitioner belongs to OBC as such, in the light of the above circular the petitioner should not have been made subject to frequent transfers. He relied upon the decision of the Hon'ble Apex Court reported in **AIR 1971 SUPREME COURT 998** in the matter of **K.H. Phadnis v. State of Maharashtra.**

10. On the other hand, the learned Deputy Advocate General argued that the petitioner has no vested right to continue on the deputation post and at any time the deputationist can be repatriated. There is no provision by which the petitioner, by all means, can continue on deputation post for two years and the transfer of the petitioner has been effected on the ground of administrative exigency.

11. Shri Prashant Mishra, learned counsel for respondent No.3 has also supported the arguments of the learned Deputy Advocate General.

12. Coming to the question of security of the tenure to continue on the deputation post at least for two years is concerned, a similar question came up for consideration before the Full Bench of Punjab and Harayana High Court reported in **AIR 1970 PUNJAB & HARYANA 322** in the matter of **Sohan Singh v. The State of Punjab and others** in which the High Court held that:-

> **"No contract comes into being between the State Government and its employee when he is sent on deputation. Virtually he remains under the effective control of the State Government and his legal**

> **position continues to be more one of status than of contract. He cannot be said to have any indefeasible right to insist that he should not be recalled before the expiry of specified period. Hence the State Government having lent the services of its officer on deputation of foreign service for a specified period can, before the expiry of the aforesaid period, legally recall the officer unilaterally without the consent of the officer concerned."**

13. Similar question came up for consideration before the Hon'ble Apex Court in the matter of **State of Madhya Pradesh and others v. Ashok Deshmukh and another** reported in **(1988) 3 Supreme Court Cases 503** in which the Court held that:-

> **"Unless the bias or malafide against the authority is established repatriation order by the department to substantive post in the parent department cannot be termed as arbitrary or violative of Article 14 of the Constitution of India."**

Similarly, the Hon'ble Apex Court in the matter of **Kunal Nanda v. Union of India and another** reported in **(2000) 5 Supreme Court Cases 362** held that:-

> **"Deputationist has no right to continue on deputation or to claim permanent absorption in borrowing department, unless his permanent absorption is covered by a statutory provision."**

In another matter of **Ratilal B. Soni and others v. State of Gujarat and others** reported in **AIR 1990 SUPREME COURT 1132** the Hon'ble Apex Court held that:-

> **"Govt. servant on deputation can be reverted to his present cadre at any time – Such servant do not get any right to be absorbed on the deputation post."**

14. The law as settled by the Hon'ble Apex Court in the matter of transfer of an employee or repatriation of an employee from the deputation post is that the Government can transfer its employee on the ground of administrative exigencies and transfer is the incident of service. The employee cannot claim as of right any place of posting or cannot claim for particular period of posting. He has to work in the interest of the administration and public interest. Therefore, the Government is entitled to transfer its employee and on such administrative action the power of the Court of judicial review comes into play only when such

transfers are made against any statutory provisions of service rules or the impugned transfer order stems from the malafide action just to demoralize and harass the public servant or otherwise order is punitive in nature.

15. As far as the security of the tenure of the deputation is concerned, it is for the borrowing department as well as the parent department, both are entitled to withdraw or repatriate, as the case may be, the public servant at any time in the administrative exigency and public interest and which cannot be subjected to judicial review, as the government servant has no indefeasible right to insist that he should be allowed to continue on the deputation post or on the particular post for a particular period. The public servant must keep in mind that he is required to serve for public cause and Govt. being master can utilize his services in public interest and in administrative exigency. Therefore, in the light of the above law laid down, I do not find any force in the arguments of the learned counsel for the petitioner that the petitioner ought to have been allowed to continue on the post for two years.

16. Now, coming to the question of repatriation of the petitioner on the political ground and to accommodate respondent No.3 is concerned, as has been held by the Hon'ble Apex Court that a mere vague and bald statement in the petition is not sufficient for exercising the power of judicial review against the administrative action. In order to exercise the power of judicial review the employee has to prima-faciely and reasonably establish his case with relevant material to show that these are the facts and circumstances and material from which it can safely be presumed or inferred or held that the particular transfer of the public servant is malafide and stems from the arbitrariness or irrational action of the State Government. In this case, the petitioner has said that he believes that for the political reasons he has been shifted because he could not accede unreasonable request of certain persons. The Government's reply in clear terms is that the petitioner's repatriation is on the ground of administrative exigency and it is a simple repatriation. They have denied that the petitioner has been repatriated simply to adjust the respondent No.3.

17. The repatriation of the petitioner cannot be termed as arbitrary or malafide or merely on the ground only because he has been repatriated within a period of 8 months. The tenure of the posting is a general rule of the service. Normally, it is expected that the employee should not be transferred in a short span of time because after joining on the post, he takes some time to acquaint himself with requirement of nature of work, adjust himself, ready to work efficiently and if he is transferred in a short span of time then he cannot deliver the desired result which are expected of him, but even this rule cannot override the administrative exigency and the public interest. On these grounds, the government employee can be transferred even after smaller period, as that is always paramount consideration for transfer. The security of term cannot come into way of public interest and administrative exigency and the right of borrowing department or the parent department to utilize the services of his employees wherever they want in best of public interest and to serve the public cause.

18. The authority relied upon by the learned counsel for the petitioner is of no help to the petitioner. In that case it was held that the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted. As has been mentioned above, the petitioner is not able to establish that his transfer has been effected on the ground of malafide or political reason, therefore, the above law is of no help to the petitioner.

19. Now, coming to the circular Annexure-P/5 issued by the State Government that while making transfer posting the officers belonging to SC/ST and OBC should not be subjected to frequent transfers and

they should also be considered for the important postings is concerned, such circulars are issued as a general guidelines and guiding factors while making transfer postings of public servants. They cannot take a shape of the statutory provisions and that, by all means, such officers are to be kept on particular post for a particular period. Such type of guidelines and circulars are always subject to the administrative exigencies and public interest. The ground of administrative exigency and public interest in each and every matter are not expected to pave way to implement the circulars. There can be also denying fact that these guidelines are routine and such guidelines should be adhered to in the ordinary course. But when the question comes of administrative exigency and public interest these circulars cannot override them. Moreover, such administrative circular does not create any indefeasible right in favour of these officers. It is for the authorities to look into these instructions while making transfers. But these instructions are not enforceable at law.

20. As has been held by the Hon'ble Apex Court in the case of **Shivlekha Vidyarthi** that it is the general presumption that all the public authorities' actions are in accordance with the established principles of natural justice and according to statutory rules. It is for the person who alleges should prove that the action of the Government or the Authority is irrational, arbitrary and violative of established principles of natural justice or law. If any employee has been transferred after short span of time, it cannot always be inferred by such transfers that in all probability the transfer is malafide or to adjust anyone. In the present case as has been held above, the petitioner has not been able to establish his case. The petition of the petitioner is based on belief without anything more i.e. reasons and material for such belief are missing.

21. In view of the above, I do not find any ground to exercise the power of judicial review in the matter against the impugned order and the petition is devoid of force and merit and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

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